REMARKS

Claims 91, 93 and 96-103 are pending in the subject application. Claims 91, 102 and 103 have hereinabove been amended to further clarify that "the sample" means "the sample of cord blood or placental blood." Support for this claim amendments can be found in the previous version of the claims. Support for the feature "a red blood cell sedimentation reagent that facilitated separation of the red blood cells from the white blood cells contained in the sample of cord blood or placental blood" can be found in the application at least on page 14 and the top of page 15. Applicants maintain that the amendments to the claims do not raise an issue of new matter. Accordingly, entry of the amendments is respectfully requested.

Rejections over Boyse et al., U.S. Patent No. 5,004,681

Claims 91, 93, and 96-103 rejected under 35 U.S.C. §102(b) as anticipated by, or in the alternative under 35 U.S.C. §103(a) as obvious over, Boyse et al. (U.S. Patent No. 5,004,681) (hereinafter "BOYSE").

Applicants respectively traverse this rejection.

Applicants maintain that BOYSE does not teach or suggest a therapeutic product separated from a sample of cord blood or placental blood as specified in independent Claims 91, 102 and 103. BOYSE quite simply does not teach or suggest the ability to obtain the concentration of white blood cells achieved in the present invention.

On page 3 of the Office Action, the Examiner refers to BOYSE as obtaining "viable cell counts of greater than 80% and 90% (see Table III...)." Again, on page 5 of the Office Action, the Examiner refers to the cell "viability" taught by BOYSE. Applicants note that Table III in BOYSE refers to the viability of cells contained in a sample and does not reflect the numbers of cells that are lost during cell separation procedures (see Column 37, 2nd paragraph). Viability of cells in a sample is not the same parameter as the

percentage of cells remaining in a sample after cell separation procedures. For example, if a theoretical product contained 50% of white blood cells contained in a sample of cord blood or placental blood, even if 90% of the white blood cells in the theoretical product were viable, then the theoretical product would still not achieve the white blood cell concentration of the therapeutic product of the claimed invention.

Table IV in BOYSE sets forth the numbers of different cell types obtained by BOYSE after cell separation procedures. For white blood cells ("CFU-GM" in Table IV (see definitions in Columns 8-9)), the percent recovery falls well below the "at least 80% of white blood cells" recited in the present independent claims.

Further, with respect to independent Claim 102, applicants maintain that BOYSE does not teach or suggest "dimethyl sulfoxide diluted to 50% with dextran."

Further, with respect to independent Claim 103, applicants maintain that BOYSE does not teach or suggest a therapeutic product where "the red cell to white cell count is approximately one hundred (100) to one (1)." On page 3-4 of the Office Action, the Examiner dismisses this limitation as a recitation of intended use. Applicants respectively point out that Claim 103 does not recite an intended use and maintain that the feature "the red cell to white cell count is approximately one hundred (100) to one (1)" is a structural limitation of the therapeutic product of Claim 103.

Finally, applicants maintain that BOYSE does not teach or suggest the claimed therapeutic product including "a red blood cell sedimentation reagent that facilitated separation of the red blood cells from the white blood cells contained in the sample of cord blood or placental blood..."

Applicants maintain that BOYSE does not anticipate or render obvious the claimed invention. Accordingly, reconsideration and withdrawal of this ground of rejection are respectfully requested.

CONCLUSIONS

In view of the amendments and the remarks made hereinabove, applicants respectfully request reconsideration and withdrawal of the rejections in the June 7, 2006 Office Action and passage the pending claims to allowance. If there are any minor matters that prevent allowance of the subject application, the Examiner is requested to contact the undersigned attorney. In addition, if further clarity is required concerning the distinction between cell "viability" and the concentration of white blood cells obtained following cell separation procedures, applicants' undersigned attorney requests a telephone interview with the Examiner.

No fee is deemed necessary in connection with the filing of this reply. However, if there are unanticipated fees required to maintain the pendency of this application, the PTO is authorized to withdraw the amount of any such fee from Deposit Account 01-1785.

Respectfully submitted,

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